

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

RICHARD BERCUME,

Petitioner,

v.

**GUY HALL, Superintendent, Santiam
Correctional Institution,**

Respondent.

Case No. 6:14-cv-01545-JE

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

Michael H. Simon, District Judge.

United States Magistrate Judge John Jelderks issued Findings and Recommendation in this case on October 7, 2015. Dkt. 32. Judge Jelderks recommended that Mr. Bercume's Amended Petition for Writ of Habeas (Dkt. 9) be denied. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Jelderks’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court ADOPTS Judge Jelderks’s Findings and Recommendation, Dkt. 32. Mr. Bercume’s Amended Petition for Writ of Habeas Corpus (Dkt. 9) is DENIED and this case is dismissed with prejudice. The Court declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 19th day of November, 2015.

/s/ Michael H. Simon
 Michael H. Simon
 United States District Judge